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OFFICE OF PETITIONS

In re Application of
Nishi et al.
Application No. 10/718,858
Patent No. 6,964,976 B2
Filed: ApNovember 20, 2003
Attorney Docket No. 02697CIPD/HG

DECISION GRANTING PETITION

This decision is in response to Applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT under (37 CFR 1.705(d))" filed on December 01, 2005 requesting that the Office adjust the PTA determination at the time of the mailing of the notice of issuance from a determination of 62 days to a determination of ninety-four (94) days.

Applicants application for PTA is **GRANTED**. The Office will adjust the PTA calculation at the time of the mailing of the notice of allowance to reflect this decision. The proper amount of PTA at the time of the issuance of the patent is 94 days. The Office will *sua sponte* issue a certificate of correction. The Office will further adjust the PAIR calculation to reflect this decision.

Applicants assert that the Office erred in the PTA calculation. The Office provided sixty-two days of administrative delay for the failure to initially act upon the application within 14 months of the filing date of the application. See 37 CFR 1.702(a)(1). Applicants agree with this determination. However, applicants disagree with the failure to provide an additional thirty-two (32) days for the failure to issue the application within four months of the payment of the issue fee under 37 CFR 1.702(a)(4).

A review of the file reflects that applicants' arguments are persuasive. The record reflects that the Office failed to issue the action within four months of the payment of the issue fee pursuant to 37 CFR 1.702(a)(4).¹ Accordingly, the Office errantly failed to grant applicants an additional 32 days of PTA. Overall the accurate determination at the time of the mailing of the issuance of the patent is ninety-four ($32 + 62 = 94$) days.

After the mailing of this decision, the Office will forward this patented file to the certificate of correction branch for a prompt issuance of a certificate of correction.

Any delays in the failure to issue this application within four months of the payment of the issue fee as required in 37 CFR 1.702(a)(4) will be reflected on the issue notification letter that is

¹The Office notes the issue fee was paid on June 14, 2005 and the patent issue on November 15, 2005, a thirty-two day delay.

mailed to applicants approximately three weeks prior to issue date. Any delays by applicant for submissions by applicants that are reductions under 37 CFR 1.704(c)(10) will be reflected in the PTA determination that is provided to applicant in the issue notification letter.

The Office has assessed the \$200.00 fee. No additional fees are required in this deciding this application.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, at 571-272-7757.

Kery A. Fries

Kery Fries
Senior Legal
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy

cc: adjusted Pair calculation
DRAFT Cert. Of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,964,976 B2

DATED : November 15, 2005

INVENTOR(S) : Nishi et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 62days

Delete the phrase "by 62 days" and insert – by 94 days--